

1 Scott E. Radcliffe (CA BAR NO. 278098)
2 **ALVES RADCLIFFE LLP**
3 2377 Gold Meadow Way, Suite 100
4 Gold River, California 95670
5 T: (916) 333-3375
6 E: sradcliffe@alvesradcliffe.com

7
8
9
10 Attorneys for Plaintiff
11 PREPARED FOOD PHOTOS, INC.

12
13
14
15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 PREPARED FOOD PHOTOS, INC.
19 f/k/a ADLIFE MARKETING &
20 COMMUNICATIONS CO., INC.,

21 Civil Action No. _____

22 **COMPLAINT**

23 Plaintiff,

24 V.

25 KM MARKET AND GRILL INC.
d/b/a AZHAR HALAL MARKET &
GRILL,

Defendant.

1 Plaintiff Prepared Food Photos, Inc. f/k/a Adlife Marketing &
2 Communications Co., (“Plaintiff”) sues defendant KM Market and Grill Inc d/b/a
3 Azhar Halal Market & Grill (“Defendant”), and alleges as follows:
4

5 **THE PARTIES**

6 1. Plaintiff is a corporation organized and existing under the laws of the
7 State of Florida with its principal place of business located in Broward County,
8 Florida.
9

10 2. Defendant is a corporation organized and existing under the laws of
11 the State of California with its principal place of business located at 193 Lasata
12 Dr., Tracy, CA 95377. Defendant’s agent for service of process is Dinesh A.
13 Panjwani, 193 Lasata Dr., Tracy, CA 95377.
14

15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. §§ 1331 and 1338(a).
18

19 4. This Court has personal jurisdiction over Defendant because it
20 maintained sufficient minimum contacts with California such that the exercise of
21 personal jurisdiction over it would not offend traditional notions of fair play and
22 substantial justice.
23

24 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)
25 because Defendant or its agents reside or may be found in this district. “The Ninth

1 Circuit has interpreted Section 1400(a) to mean that venue is proper in any judicial
2 district in which the defendant would be amenable to personal
3 jurisdiction.” Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-
4 LRL, 2011 U.S. Dist. LEXIS 119379, at *8 (D. Nev. Oct. 14, 2011) (citing Brayton
5 Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010)). Venue
6 is thus proper in this District because personal jurisdiction exists over Defendant
7 in this District.
8

9

10 FACTS

11 **I. Plaintiff’s Business**

12 6. Plaintiff is in the business of licensing high-end, professional
13 photographs for the food industry.
14

15 7. Through its commercial website (www.preparedfoodphotos.com),
16 Plaintiff offers a monthly subscription service which provides access to/license of
17 tens of thousands of professional images.
18

19 8. Plaintiff charges its clients (generally, grocery stores, restaurant
20 chains, food service companies, etc.) a minimum monthly fee of \$999.00 for access
21 to its library of professional photographs.
22

23 9. Plaintiff does not license individual photographs or otherwise make
24 individual photographs available for purchase. Plaintiff’s business model relies on
25 its recurring monthly subscription service such that Plaintiff can continue to
26

1 maintain its impressive portfolio.

2 10. Plaintiff owns each of the photographs available for license on its
3 website and serves as the licensing agent with respect to licensing such
4 photographs for limited use by Plaintiff's customers. To that end, Plaintiff's
5 standard terms include a limited, non-transferable license for use of any
6 photograph by the customer only. Plaintiff's license terms make clear that all
7 copyright ownership remains with Plaintiff and that its customers are not permitted
8 to transfer, assign, or sub-license any of Plaintiff's photographs to another
9 person/entity.

12 **II. The Work at Issue in this Lawsuit**

13 11. In 1994, a professional photographer created a photograph titled
14 "BeefCowFeet001" (the "Work"). A copy of the Work is exhibited below:



1 12. The Work was registered by Plaintiff (pursuant to a work-for-hire
2 agreement with the author that transferred all rights and title in the photograph to
3 Plaintiff) with the Register of Copyrights on November 18, 2016 and was
4 assigned Registration No. VA 2-022-602. A true and correct copy of the
5 Certification of Registration pertaining to the Work is attached hereto as **Exhibit**
6 **“A.”**

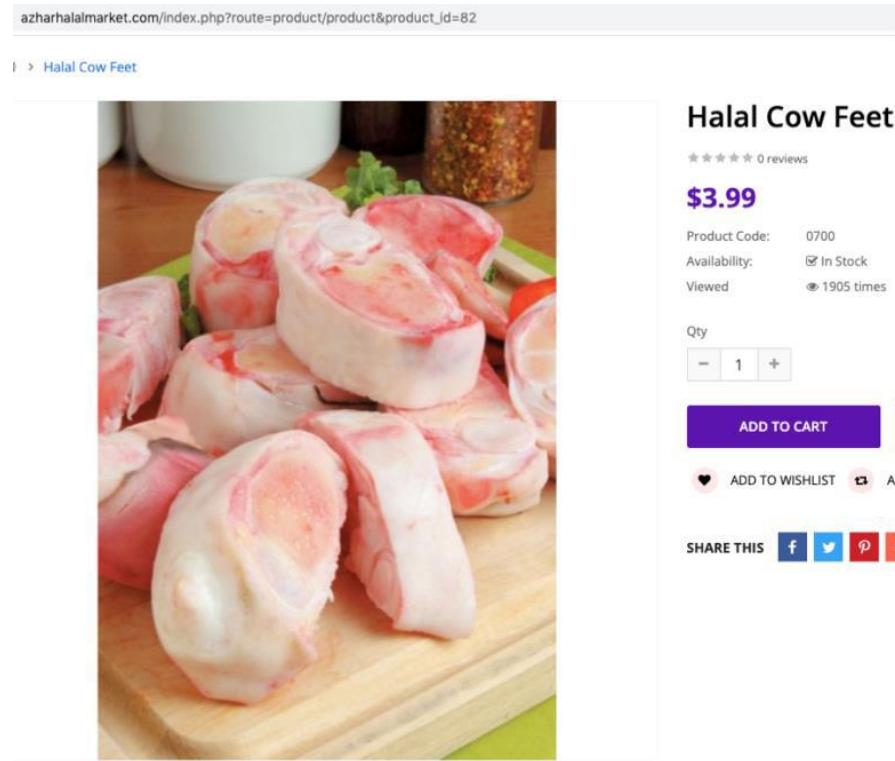
7 13. Plaintiff is the owner of the Work and has remained the owner at all
8 times material hereto.

9 **III. Defendant’s Unlawful Activities**

10 14. Defendant is a family-owned restaurant and grocery store that
11 specializes in offering Halal food products.

12 15. Defendant advertises/markets its business primarily through its
13 website (<https://azharhalalmarket.com>), social media
14 (<https://www.facebook.com/azharmarket/>), and other forms of advertising.

15 16. On a date after Plaintiff’s above-referenced copyright registration of
16 the Work, Defendant published the Work on its website in connection with
17 promoting Halal Cow Feet selling for \$3.99 (at
18 https://www.azharhalalmarket.com/index.php?route=product/product&product_id=82):



17. A true and correct copy of the screenshot of Defendant's website,
18. displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

19. Defendant is not and has never been licensed to use or display the
20. Work. Defendant never contacted Plaintiff to seek permission to use the Work in
21. connection with its business or for any other purpose.

22. Defendant utilized the Work for commercial use – namely, in
23. connection with the marketing of its business.

24. Upon information and belief, Defendant located a copy of the Work
25. on the internet and, rather than contact Plaintiff to secure a license, simply copied
the Work for Defendant's own commercial use.

26. Through its ongoing diligent efforts to identify unauthorized use of its

1 photographs, Plaintiff first discovered the Defendant's unauthorized use/display
2 of the Work on April 6, 2022. Following Plaintiff's discovery, Plaintiff notified
3 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable
4 to negotiate a reasonable license for the past/existing infringement of its Work.
5

6 22. All conditions precedent to this action have been performed or have
7 been waived.
8

9 **COUNT I – COPYRIGHT INFRINGEMENT**

10 23. Plaintiff re-alleges and incorporates paragraphs 1 through 22 as set
11 forth above.
12

13 24. The Work is an original work of authorship, embodying copyrightable
14 subject matter, that is subject to the full protection of the United States copyright
15 laws (17 U.S.C. § 101 *et seq.*).

16 25. Plaintiff owns a valid copyright in the Work, having registered the
17 Work with the Register of Copyrights and owning sufficient rights, title, and
18 interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert
19 the claim(s) herein.
20

21 26. As a result of Plaintiff's reproduction, distribution, and public display
22 of the Work, Defendant had access to the Work prior to its own reproduction,
23 distribution, and public display of the Work on Defendant's website, webpage,
24 and/or social media.
25

1 27. Defendant reproduced, distributed, and publicly displayed the Work
2 without authorization from Plaintiff.
3

4 28. By its actions, Defendant infringed and violated Plaintiff's exclusive
5 rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing,
6 distributing, and publicly displaying the Work for its commercial purposes.
7

8 29. Defendant's infringement was willful as it acted with actual
9 knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's
10 copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website
11 ("azharhalalmarket.com © 2020. All Rights Reserved.") indicating that
12 Defendant understands the importance of copyright protection and intellectual
13 property rights and is actually representing that it owns each of the photographs
14 published on its website. See, e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-
15 cv-00043-TWP-DLP, 2018 U.S. Dist. LEXIS 127717, at *3 (S.D. Ind. July 31,
16 2018) ("[T]he willfulness of ROI's infringement is evidenced by the fact that at
17 the bottom of the webpage on which the Indianapolis photograph was unlawfully
18 published appeared the following: 'Copyright © 2017.' By placing
19 a copyright mark at the bottom of its webpage that contained Mr.
20 Bell's copyrighted Indianapolis Photograph, Mr. Bell asserts ROI willfully
21 infringed his copyright by claiming that it owned the copyright to everything on
22 the webpage; John Perez Graphics & Design, LLC v. Green Tree Inv. Grp., Inc.,
23
24
25

1 Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist. LEXIS 61928, at *12-13 (N.D.
2 Tex. May 1, 2013) (“Once on Defendant’s website, Defendant asserted ownership
3 of Plaintiff’s Registered Work by including a copyright notice at the bottom of
4 the page. Based on these allegations, the Court finds Plaintiff has sufficiently pled
5 a willful violation....”). Defendant clearly understands that professional
6 photography such as the Work is generally paid for and cannot simply be copied
7 from the internet.
8

9
10 30. Plaintiff has been damaged as a direct and proximate result of
11 Defendant’s infringement.

12
13 31. Plaintiff is entitled to recover his actual damages resulting from
14 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to
15 17 U.S.C. § 504(b), Plaintiff is entitled to recover damages based on a
16 disgorgement of Defendant’s profits from infringement of the Work, which
17 amounts shall be proven at trial.
18

19
20 32. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to
21 statutory damages pursuant to 17 U.S.C. § 504©, in such amount as deemed proper
22 by the Court.
23

24 33. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover his
25 costs and attorneys’ fees as a result of Defendant’s conduct.
26

27 34. Defendant’s conduct has caused, and any continued infringing
28

1 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by
2 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,
3 Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's
4 exclusive rights under copyright law.

5 **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- 6 a. A declaration that Defendant has infringed Plaintiff's copyrights in the
7 Work;
- 10 b. A declaration that such infringement is willful;
- 11 c. An award of actual damages and disgorgement of profits as the Court deems
12 proper or, at Plaintiff's election, an award of statutory damages for willful
13 infringement up to \$150,000.00 for each infringement of the Work;
- 15 d. Awarding Plaintiff his costs and reasonable attorneys' fees pursuant to 17
16 U.S.C. § 505;
- 17 e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing
18 amounts;
- 20 f. Permanently enjoining Defendant, its employees, agents, officers, directors,
21 attorneys, successors, affiliates, subsidiaries and assigns, and all those in
22 active concert and participation with Defendant, from directly or indirectly
23 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,
24 reproduce, or otherwise market any works derived or copied from the Work

1 or to participate or assist in any such activity; and

2 g. For such other relief as the Court deems just and proper.

3

4 **Demand For Jury Trial**

5 Plaintiff demands a trial by jury on all issued so triable.

6

7 DATED: March 13, 2023.

8

9 **ALVES RADCLIFFE LLP**

10 By: /s/ Scott E. Radcliffe

11

12 SCOTT E. RADCLIFFE
13 Attorney for Plaintiff
14 Prepared Food Photos, Inc. f/k/a
15 Adlife Marketing Communications
16 Co., Inc.